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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. MARTIN MARCOS MARTINEZ, Appellant.	)	2 CA-CR 2010-0149 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20090756001

Honorable Jane L. Eikleberry, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Kent E. Cattani and Melissa M. Swearingen — Phoenix
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Scott A. Martin — Tucson
Attorneys for Appellant

K E L L Y, Judge.

¶1 Appellant Martin Martinez appeals from his convictions and sentences. He asserts the trial court erred in denying his challenge, made pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), to the state's peremptory strikes of two Hispanic venirepersons. Martinez also argues the court erred in denying him a jury trial to determine the existence of his prior convictions. Finding no error, we affirm.

Background

¶2 "We view the facts and reasonable inferences therefrom in the light most favorable to sustaining the verdicts." *State v. Herrera*, 203 Ariz. 131, ¶ 2, 51 P.3d 353, 355 (App. 2002). Martinez and his co-defendant, Johnny Sanchez, were charged with second-degree burglary, attempted aggravated robbery, attempted armed robbery, and aggravated assault.

¶3 At the close of the state's case, the trial court granted Martinez's motion for a directed verdict as to the attempted armed robbery charge. The jury entered guilty verdicts for the remaining charges. The court sentenced Martinez to concurrent terms of imprisonment on all counts, the longest of which was ten years.[1] This appeal followed.[2]

[1]In a separate proceeding, Martinez pled guilty to one count of sale and/or transfer of a narcotic drug. The trial court sentenced him for this charge at the same time it sentenced him in this case.

[2]Although neither party raises the issue, the notice of appeal was filed before the entry of judgment on April 29, 2010. *See Robinson v. Kay*, 225 Ariz. 191, ¶ 4, 236 P.3d 418, 419 (App. 2010) (we are required to examine our own jurisdiction). But, even assuming the notice of appeal was premature, because the sentencing minute entry was the final order lacking only formal entry, we conclude we have jurisdiction pursuant to the exception set forth in *Barassi v. Matison*, 130 Ariz. 418, 636 P.2d 1200 (1981).

Discussion

I. Peremptory Strikes

¶4 Martinez claims "[t]he trial court erred in denying [his] *Batson* challenge to two of the State's strikes of Hispanic venirepersons . . . because it erroneously held that [he] did not make a *prima facie* case." Alternatively, Martinez argues the court "failed to perform its fact[-]finding duty to evaluate the State's proffered explanations."

¶5 The Equal Protection Clause of the Fourteenth Amendment prevents peremptory strikes of prospective jurors based upon race. *Batson*, 476 U.S. at 89. There are three steps involved in a *Batson* challenge:

> (1) the party challenging the strikes must make a prima facie showing of discrimination; (2) the striking party must provide a race-neutral reason for the strike; and (3) if a race-neutral explanation is provided, the trial court must determine whether the challenger has carried its burden of proving purposeful racial discrimination.

State v. Roque, 213 Ariz. 193, ¶ 13, 141 P.3d 368, 378 (2006), *quoting State v. Cañez*, 202 Ariz. 133, ¶ 22, 42 P.3d 564, 577 (2002). When reviewing the court's ruling on a *Batson* challenge, we defer to its factual findings, but we review de novo its application of the law. *State v. Lucas*, 199 Ariz. 366, ¶ 6, 18 P.3d 160, 162 (App. 2001). We will not reverse a trial court's ruling on a *Batson* challenge unless it is clearly erroneous. *State v. Newell*, 212 Ariz. 389, ¶ 52, 132 P.3d 833, 844-45 (2006).

¶6 At a bench conference, before the jury was sworn, counsel for Sanchez made a *Batson* objection in which Martinez joined because the state had struck two Hispanic venirepersons. Before Sanchez explained why the strikes were improper, the

state informed the trial court that "the defense [had] also str[uck] Hispanic jurors, which . . . nullifie[d] any *Batson* claim."[3] The court responded that "for the sake of the record," the prosecutor should present her reasons for the two strikes.

¶7 The prosecutor explained that one of the venirepersons had indicated he had been present on several occasions when "friends and neighbors [were] arrested." Based on these experiences, the prosecutor did not "think he was an appropriate candidate." The other venireperson previously had served in a civil trial and when asked what the verdict was, she had stated "not guilty." The prosecutor explained that the use of this language had made her "concerned about [the venireperson's] past," and she had based her strike on that concern.

¶8 Martinez asserts the trial court's finding that "there is no basis for a *Batson* challenge to the exclusion of these jurors," may be taken as a ruling that he failed to make a prima facie showing of discrimination. In support of this interpretation, Martinez points out that the court asked for an explanation for the strikes "for the sake of the record," suggesting it believed the prosecutor was correct that Martinez's striking of Hispanic venirepersons "nullifie[d] any *Batson* claim." Martinez argues that if the trial court made such a ruling, "it did so erroneously." But, as Martinez concedes, a court's request for an explanation of the peremptory strikes has been deemed to be an implicit finding that a prima facie showing of discrimination had been made. *See State v. Trostle*, 191 Ariz. 4, 12, 951 P.2d 869, 877 (1997) (by requesting explanation of peremptory

[3]Counsel for Martinez later admitted he had struck at least one Hispanic venireperson and gave a race-neutral explanation for the strike.

strike, court implicitly finds that a prima facie showing of discrimination has been presented). Thus, by requiring the prosecutor to present her reasons for striking the potential jury members, the court implicitly found that the first step of *Batson* was satisfied. *Id*. And, notwithstanding the language employed by the court in its ruling—which arguably suggested its skepticism that the defendant had made a prima facie case in the first instance—we presume the trial court knows the law and we interpret its rulings accordingly. *See State v. Ramirez*, 178 Ariz. 116, 128, 871 P.2d 237, 249 (1994) (trial court presumed to know law).

¶9 Martinez next argues that because the trial court "made no evaluation of the state's proffered explanation" on the record, finding only that there was "no basis for a *Batson* challenge" the court "failed to perform its role as fact-finder under the third *Batson* step." We disagree. Although Martinez is correct that the court made no explicit findings regarding the prosecutor's explanations, credibility or demeanor, it is not required to do so. *See Cañez*, 202 Ariz. 133, ¶ 28, 42 P.3d at 578 (by ruling against defendant's *Batson* challenge, trial court implicitly found burden of showing intentional discrimination not met). Therefore, by finding there was no basis for Martinez's challenge, the court implicitly found that the grounds provided by the prosecutor were race-neutral. We defer to the trial court's factual findings on a *Batson* challenge absent clear error. *Newell*, 212 Ariz. 389, ¶ 52, 132 P.3d at 844-45; *Lucas*, 199 Ariz. 366, ¶ 6, 18 P.3d at 162. On the facts presented, we cannot say the court erred in so concluding.

II. Prior Convictions

¶10 When Martinez was indicted, the state also alleged he previously had been convicted of five other offenses. After the jury returned its verdicts, the trial court held a bench trial on the state's allegations of prior convictions. Martinez objected to the bench trial, claiming he was entitled to a jury trial, based on *Apprendi v. New Jersey*, 530 U.S. 466 (2000), as well as provisions of the Arizona and Federal Constitutions. The court overruled the objection finding that a bench trial on the issue of prior convictions did not "violate [the] state or federal constitution, nor does *Apprendi* require a jury determination of priors." On appeal, Martinez challenges the court's ruling.[4] We review sentencing issues involving statutory interpretation and constitutional law de novo. *State v. Urquidez*, 213 Ariz. 50, ¶ 11, 138 P.3d 1177, 1180 (App. 2006).

¶11 Rule 19.1(b)(2), Ariz. R. Crim. P., provides that the allegation of a prior conviction is to be determined by the trial court. The United States Supreme Court has recognized the constitutionality of such a procedure. *See Apprendi*, 530 U.S. at 490; *State v. Anderson*, 211 Ariz. 59, n.2, 116 P.3d 1219, 1221 n.2 (2005) (citing *Apprendi* and noting prior conviction may constitutionally be determined by the trial court). We are bound to follow these decisions. *See State v. Swoopes*, 216 Ariz. 390, ¶ 38, 166 P.3d 945, 957 (App. 2007) (we are bound by United States Supreme Court's interpretation of

[4]Martinez acknowledges that an exception to the jury trial requirement exists for prior convictions, and that we have previously addressed this issue in *State v. Keith*, 211 Ariz. 436, ¶ 3, 122 P.3d 229, 230 (App. 2005). Martinez "nonetheless presents this issue to preserve it."

federal constitution and decisions of Arizona Supreme Court). We therefore conclude the court did not err in denying Martinez's request for a jury trial on his prior convictions.

Disposition

¶12 We affirm the convictions and sentences imposed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge